

DOCKET FILE COPY ORIGINAL

FREDRIKSON & BYRON, P.A.
Attorneys and Advisors

Minneapolis
London
Washington DC
Affiliates:
Mexico City
Warsaw
1825 I Street NW
Suite 400
Washington DC 20006
(202) 828-6280
FAX (202) 429-2727
www.fredlaw.com

Direct Dial No.
(202) 828-6280
jmullen@fredlaw.com

September 10, 2001

RECEIVED

SEP 10 2001

VIA MESSENGER

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

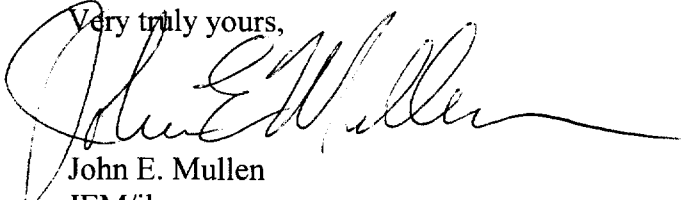
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 – 12th Street SW
12th Street Lobby
Designated Counter at TWA-325
Washington, DC 20554

Re: Petition for Waiver of the Benchmark Settlement Rates for Guyana
FCC IB Docket No. 96-261

Dear Ms. Salas:

Enclosed for filing, please find the original and four copies of the Comments of Caribbean Wireless Telecom, LLC in response to the above referenced Petition by Atlantic Tele-Network, Inc., together with the Unsworn Certificate of Service. Please contact Ann Ladd, Esq. at (612) 347-7124 or aladd@fredlaw.com with any questions about this filing.

Very truly yours,


John E. Mullen
JEM/jbr

Enclos.
cc: Caribbean Wireless Telecom, LLC

No. of Copies rec'd at 4
List ABCDE

\\ODMA\PCDOCS\FBDOCS\12556387\1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 10 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)

International Settlement Rates)
)
)

Petition of Atlantic Tele-Network, Inc.)
for Waiver of the Benchmark Settlement)
Rate for Guyana)
)
)
)

IB Docket No. 96-261

UNSWORN CERTIFICATE OF SERVICE

I, John E. Mullen, state under penalty of perjury, that on September 10, 2001, I caused to be delivered via Messenger copies of the Comments of Caribbean Wireless Telecom, LLC in response to the above referenced Petition by Atlantic Tele-Network, Inc. in the above-referenced matter on the following parties:

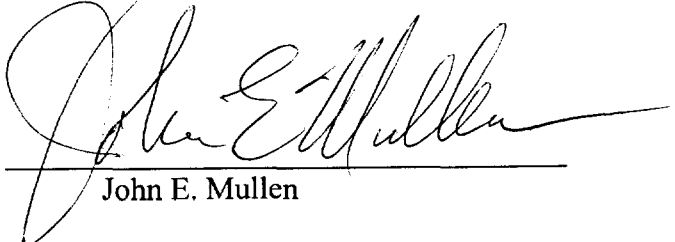
Robert J. Aamoth
Kelly, Drye & Warren LLP
1200 – 19th Ave. NW
Suite 500
Washington, DC 20036

International Transcription Service, Inc.
1231 – 20th Street NW
Washington, DC 20037

Atlantic Tele-Network, Inc.
19 Estate Thomas
Havensight, St. Thomas
Virgin Islands, 00802

Federal Communications Commission
Office of Public Affairs Reference
and Information Center
CY-A257
Portals 2 Bldg.
445 – 12th Street SW
Washington, DC 20554

Dated: Sept. 10, 2001



John E. Mullen

RECEIVED

SEP 10 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

International Settlement Rates)
96-261)

Petition of Atlantic Tele-Network, Inc.)
for Waiver of the Benchmark Settlement)
Rate for Guyana)
_____)

IB Docket No.

To: The Commission

**COMMENTS OF CARIBBEAN WIRELESS TELECOM, LLC
WITH REGARD TO THE
PETITION FOR WAIVER OF THE BENCHMARK SETTLEMENT RATE FOR
GUYANA
SUBMITTED BY ATLANTIC TELE-NETWORK, INC.**

SUMMARY

The crux of the Federal Communications Commission's (FCC) Benchmark Order is the fundamental FCC policy of restructuring the economics of international telecommunications services by fostering cost-based accounting. In making a decision on the Petition For Waiver Of The Benchmark Settlement Rate for Guyana submitted by Atlantic Tele-Network ("Petition For Waiver"), the FCC must assess the effect of granting a waiver on FCC policies. The Petition for Waiver should be denied because it utterly fails to include any data on cost-based accounting. Without this data, there is no evidence in the record to show good cause that a waiver will promote FCC policy. Indeed, the Petition for Waiver disregards and contradicts the policies and principles adopted by the FCC after lengthy deliberation, as described in the Benchmark Order.

The omission of cost-based data in the Petition For Waiver was not inadvertent. Guyana Telephone & Telegraph, Ltd. ("GT&T") has defied Guyana Public Utilities Commission ("Guyana PUC") orders to submit cost-based accounting since 1997. Cost-based accounting is similarly absent in GT&T's Petition For Waiver with the FCC.

One goal of the FCC policy to promote cost-based accounting is for consumers to benefit from the reduced settlement rates. *See* Benchmrk Order at Para. 7 ("Accounting rate reform will allow consumers in all countries to receive higher quality service, more service options, and lower rates as accounting rates are reduced to a more cost-based level. "). In other words, the FCC expects that international carriers will pass the saving

on to the consumers. The FCC should not assume that GT&T will pass on any savings to the Guyana consumers. In fact, the assumption should be just the opposite. GT&T continues to claim that it is not achieving its guaranteed 15 percent rate of return and to achieve its guarantee, has demanded and continues to demand rate increases.

Similarly, the Benchmark Order and settlement rates reflect the FCC's conclusion that cost-based rates and exposure to market forces will benefit telecommunication providers as well. Benchmark Order at Para. 7 ("Accounting rate reform will also benefit every carrier that provides international services by stimulating growth of those services."). GT&T's demand for artificially inflated rates shows clearly its desire to hide from market forces, which the FCC described as beneficial in the Benchmark Order.

GT&T also has filed applications before the Guyana PUC to seek additional rate increases to fund expansion of its network. The President of the Guyana Consumer Association summarized GT&T's position, which is that "GT&T has publicly declared on several occasions that there would be no expansion or improvement in the system unless it was given a steep rate increase. This steep rise would be in the vicinity of 1000 percent." Exhibit 12. Price increases by GT&T is contrary to the FCC goal of reducing prices for consumers.

It thus begs the question: What has GT&T done with its significant net settlement revenue over the past ten years? The answer is that GT&T has engaged in highly questionable financial transactions to improperly divert money into the coffers of its

parent company, Atlantic Tele-Network, Inc. (ATN). Based on documents filed by publicly held ATN with the Securities and Exchange Commission (SEC), in excess of US\$110 million over the past decade has been improperly diverted out of Guyana. GT&T also claims that it invested US\$140 million over the past decade to build out its network and infrastructure facilities. The real figure is closer to somewhere between US\$50 million to US\$70 million.

The FCC has never granted any waivers to the Benchmark Order. We urge the FCC to look carefully at the realities in Guyana, in contrast to the rosy picture that is painted by GT&T. The president of the Guyana Consumers Association summed it up this way: “GT&T claims that it used capital infusion from ATN, settlement revenues, and all its profits, except for the year 1997¹ ‘to offset dramatic changes in telecommunications in Guyana.’ GT&T paints itself as an altruistic institution, which has been here 10 years without getting anything for it. To the Guyanese public this statement is quite hollow.” Exhibit 12.

GT&T’s suggestion that it is helping Guyana at its own expense is not true. According to the president of the Guyana Consumers Association, “When ATN came here to purchase the telephone company, they did not even have enough money to complete the purchase of the sale and the sale had to be held up. Further, GT&T, in ensuing years, made vast sums of money on the audiotext [phone sex calls], and ATN has skimmed off six percent of the gross revenues of GT&T per month via a mechanism known as Advisory Fees.

¹ This is a typo and the correct year is 1999, the first year that the Government of Guyana received any dividends for its 20 percent shareholder interests in GT&T.

These Advisory Fees now total billions of Guyanese dollars. ATN/GT&T have certainly done very well for themselves and are certainly not selfless, altruistic do-gooders.”

Exhibit 12.

ARGUMENT

On August 7, 1997, the Federal Communications Commission (FCC) issued Benchmark Order (IB Docket No. 96-261), to further its policy goal of restructuring the economics of the international telecommunications services market. This restructuring seeks to promote a shift from the traditional rate-of-return methodology to cost-based accounting. Specifically, the FCC seeks to reduce the significant margins on international termination fees in order to (1) relieve U.S. consumers from paying artificially high prices for international services; (2) encourage foreign carriers to introduce effective cost-based pricing for all telecommunications services; (3) introduce and promote competition, and (4) reverse anticompetitive conditions in the international telecommunications market.

In reviewing ATN’s Petition for a Waiver of the Benchmark Settlement Rate for Guyana, it is critical to assess whether GT&T has provided cost-based data to justify the request for the waiver, and secondly, whether a waiver will advance the FCC’s stated goals. We respectfully submit that a waiver does not advance FCC goals. We also submit that a waiver is not in the best interests of Guyanese consumers, US-based businesses with interests of invest in Guyana, or US consumers calling Guyana. A waiver also will not foster introducing and promoting competition in the Guyana international and domestic telecom sectors.

The standard for granting a waiver requires “good cause shown” by GT&T/ATN. 47 C.F.R. § 1.3. The required showing is elaborated upon in Northeast Cellular Telephone Co., L.P. v. F.C.C., 897 F.2d 1164, 1166 (D.C. Cir., 1977): “...a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”

In addition, to receive a waiver the party bringing the petition must bring to light new facts not considered by the FCC when making the prevailing rule – not merely re-hash old arguments or quibble with the rule itself. Industrial Broadcasting Co. v. F.C.C., 437 F.2d 680, 683 (D.C. Cir. 1970) (“Thus, a heavy burden traditionally has been placed upon one seeking a waiver to demonstrate that his arguments are substantially different from those which have been carefully considered at the rulemaking proceeding.”)

GT&T fails in both regards to show good cause. First, the Petition for Waiver does not allege any “special circumstances” that are unique to Guyana as opposed to many other “Low Income” countries also covered by the Benchmark Order. Indeed, a waiver for Guyana would set a powerful precedent for the other Low Income countries, making the Benchmark Order inapplicable to this entire group the FCC intended to address. *See Basic Media, Ltd. V. F.C.C.*, 559 F.2d 830, n.2 (“But law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case.”)

Second, the Petition for Waiver does not bring forth any significant new facts or information – rather, it attempts to re-hash issues, such as the utility of inflated settlement rates, addressed at great length when the Benchmark Order was adopted. GT&T continues to seek a head-in-the sand regime of high settlement rates, in the unfounded hope these will help consumers in Guyana and elsewhere, even though the FCC has clearly stated its position that consumers and providers benefit from lower rates, thereby stimulating demand. In addition, the FCC has observed that carriers with above-market rates will be cut out of the international telecommunications community. Benchmark Order at Para. 8. If ATN receives its waiver, Guyana will be an island of sky-high rates in a sea of lower, market-based rates. Such a regime spells long-term disaster for Guyana.

This Petition For Waiver is not the first time that GT&T, through its parent company ATN, has sought relief from the FCC and sought to re-open resolved issues. ATN sought an earlier waiver of the “proportionate return” requirement in its 214 certification. In Re Atlantic Tele-Network, Inc. 8 F.C.C.R 4776 (1993), affirmed, No 93-1616 (D.C. Cir. 1995). The proportionate return waiver was denied because of “ATN’s ability and incentive to discriminate against competing domestic carriers.” Id. In denying ATN’s petition, the appellate court reasoned as follows:

“A carrier with monopoly control over bottleneck facilities is in a position to whipsaw and **otherwise discriminate** against competing carriers. We believe that the appropriate means of controlling the potential abuse of foreign market power in the instant case is to ... retain the consideration the Bureau applied to

ATN's Section 412 authorization. Commission Order, 8 F.C.C.R. at 4779 (emphasis added). GT&T's monopoly control of Guyanese facilities created an opportunity for it to discriminate, and ATN's investment in GT&T created the incentive to favor ATN over other domestic carriers. With an 80 percent ownership interest in GT&T, ATN is clearly a dominant carrier [citations omitted], and it openly admits that it intended to give preferential treatment to itself to the detriment of other domestic carriers."

Id.² (emphasis in original). And of course, the arguments that ATN made earlier in the proportionate return case and which were rejected by the FCC are very similar to the arguments that ATN now makes again in its Petition For Waiver. In the petition for waiver of proportionate return,

"ATN's strongest argument is that numerous pro-competitive factors militate against a proportionate return requirement. ATN contends that permitting it a disproportionate allocation of return traffic would result in lower collection rates, better service to U.S. customers, and more competition from new entrants in the U.S.-Guyana route. Such an approach would also encourage other U.S. companies to invest in foreign carriers. ATN also argues that a proportionate return requirement overlooks significant barriers to entry in the U.S. market for international calls."

Id.

Third, the Petition for Waiver misrepresents and ignores the statements in the Benchmark Order. For example, the author of the Petition for Waiver, at page 1 note 3, misrepresents a quote from the Benchmark Order at Para. 21, writing: "('reduction of settlement rates to the benchmark levels could result in undue disruption of foreign carriers' operations....')." The Petition author omitted one critical word from the quote, and Paragraph 21 actually reads: "... *immediate* reduction of settlement rates to the

² See also In Re Atlantic Tele-Network, Inc. 6 F.C.C.R. 6529, 6531 (1991) (The Common Carrier Bureau found that ATN, through its affiliation with GT&T, had exclusive control over Guyana's facilities and therefore has the ability to discriminate against competing U.S. carriers.

benchmark levels could result in undue disruption of foreign carriers' operations." The Benchmark Order addresses this *immediate* concern by adopting a "glide path" transition period for the benchmark rates. Even though GT&T has had several years to prepare for the reduction of settlement rates, it has failed to do so. The cost of this failure should not be borne by consumers in the US and Guyana.

I. GT&T Failed To Provide Any Cost-based Data To Support The Petition For Waiver Of The Benchmark Settlement Rates.

GT&T failed to submit any evidence or documentation on cost-based accounting to the FCC in support of its Petition For Waiver or to the Guyana PUC in support of its applications for rate increases. Without this evidence, the Guyana PUC could not consider, much less grant the rate increases. Without such evidence, the FCC cannot properly decide whether a waiver will advance FCC policies. The Petition For Waiver on its face must be denied.

Even if sufficient cost-based accounting is subsequently submitted, GT&T cannot demonstrate a record of cost-based accounting nor can it demonstrate, contrary to the allegation in its Petition For Waiver, that it is "unique in its ability to demonstrate a consistent pattern over ten years of using settlement revenues to fund major network expansion and significant infrastructure upgrades."

The reality in Guyana is that during the past decade, no significant landline infrastructure facilities have been implemented that are capable of fulfilling GT&T's license obligations

of universal service. GT&T insists on rate of return methodology yet fails to submit the necessary documentation for the Guyana PUC to decide rate of return and tariff pricing issues.

A. GT&T refuses to submit cost-based data to the Guyana PUC

The Guyana PUC requested GT&T to submit cost-based data in order to evaluate GT&T's various applications for rate increases and determination of rate of return issues.

"We [the Guyana PUC] are willing to grant GT&T rates for its services which will give it a minimum fifteen percent rate of return on its investment, including investment made for implementing the Expansion Plan settled by this Order. We are willing to have a periodic review of the rates for the purpose of ensuring the above objective.

We cannot undertake a review of the rates at this stage because we do not have before us the estimates of the cost of implementing the expansion plan, the projected increase in revenues if the plan is implemented and the revenues required to support the minimum fifteen per cent rate of return on investment. We are willing to look into these aspects, provided that there are no impediments."

Exhibit 1, PUC Order No 5/1997 at 6, Paragraphs 28-29. The request for information is not unreasonable and in fact, it is standard information that public utilities all over the world are routinely required to submit. The Guyana PUC ordered GT&T to provide cost-based data.

"GT&T is directed to provide to this Commission as early as it can, detailed estimates of cost for the implementation of the directions in Orders (i) [targeted line expansion] to (iv) above [facilities for call diversion, call waiting, reminder call and three way calling], the projected increase in revenues when the above mentioned directions are implemented and the revenues required to support a minimum fifteen percent rate of return on investment."

Exhibit 1, PUC Order No 5/1997 at 11, Order at Paragraph (vii). GT&T has still not complied. Mr. Earl Singh, CEO of Caribbean Wireless Telecom, LLC (CWT) recently had discussions with the Guyana PUC Chairman, The Honorable Prem Persaud, on August 28, 2001. Mr. Singh also had conversations with the Guyana PUC Secretary, Mr. Anthony Nurse on September 4, 2001. Both affirm that GT&T still has not complied with the PUC Order. Affidavit of Earl Singh, Paragraph 32.

Without significant rate increases, GT&T refuses to expand its network.³ President of the Guyana Consumers Association summed it up this way:

In its petition [for the waiver] GT&T talks glibly about its "Expansion Plan." In point of fact, GT&T has not carried out the Expansion Plan which it had agreed to do when it stated to do business here and on which basis it was granted a license over a decade ago. In fact, GT&T has publicly declared on several occasions that there would be no expansion or improvement in the system unless it was given a steep rise in rates. This steep rise would be in the vicinity of 1000 percent.

Exhibit 12. Without cost-based accounting data, the Guyana PUC refused to grant the rate increase, even though the PUC is prepared to do so.

GT&T and the Guyana PUC are currently at an impasse. GT&T filed an appeal of the Guyana PUC decision before the Guyana court. Since GT&T refuses to withdraw the appeal, the issue of rate increases, rate of return, and expansion plan are currently tied up in court.

³ GT&T averages about 4,000 to 5,000 new landline phones per year.

Finally, it should be noted that the Government of Guyana (GOG) is taking affirmative steps to resolve this impasse with the assistance of the Inter-American Development Bank (IDB). Underway is the implementation of the first phase of a project entitled, "Reform and Modernization of Telecommunications in Guyana."⁴ This project, in the amount of US\$1,600,000, is primarily financed by the Multilateral Invest Fund (MIF), an agency of the IDB. One of the project objectives is to conduct an audit of GT&T so that credible cost-based accounting can serve as the basis for cost-oriented rates for all participants in the sector.

There is very limited data on the financial situation of GT&T. It is therefore impossible to determine the cost basis for rates to final users and for interconnection charges to other carriers. An audit of the GT&T operations would indicate actual costs incurred by the company and would serve as the basis of cost-oriented rates for all participants in the sector. Networking modeling would provide indication of the costs that could [be] expected if the network were managed efficiently. The MIF resources will be used to engage a firm with experience in modeling telecommunications networks and in estimating costs of different types of services.⁵

There is thus absolutely no basis for the FCC to find that any financial data that GT&T submits is credible. It is essential that any financial data from GT&T/ATN be independently verified.

B. GT&T Financial Submissions to the Guyana PUC do not follow FCC practices and procedures.

⁴ IDB Document Operation No. ATN/MT-7047-GY, approved on July 12, 2000. The IDB found that "[t]here are now about 70,000 lines installed and request for 70,000 additional lines have been made. The failure by GT&T to comply with the expansion plan in the time specified could potentially be grounds for the cancellation of the license, and has been a large point of contention between the operator and the PUC. GT&T alleges that it has not complied with the expansion plan because service rates are too low and the guaranteed return on investment cannot be met. Under current circumstances, there is insufficient cost data available for the PUC to determine actual costs to providing services to final consumers and interconnection to other carriers. *Id.* At 2, Paragraph 2.5

The Guyana PUC has done its best to work with the financial information that GT&T submitted in support of its various applications for rate increases. Unfortunately, the submissions are self-serving and do not follow FCC established practice and procedure, which GT&T is generally required to follow. The following excerpt from the Report of the PUC Staff Regarding Interim Rates, Tariff Notice Filed October 27, 1998 by the Guyana PUC staff and its consultants, the Georgetown Consulting Group, dated April 1999 (The Georgetown Consulting Group Report) illustrates the point.

GT&T is obliged to follow FCC precedent.

“GT&T’s reasoning or methodology for certain action it took in preparing its filings is at times inconsistent with the rules of the United States Federal Communications Commission. GT&T is obliged to follow FCC precedent or rules in cases in which there has been no decision between it and the Guyana PUC as how to resolve regulatory issues.”

Exhibit 2, The Georgetown Consulting Group Report at Preface.

GT&T refused to cooperate with the Guyana PUC to provide requested financial data:

“GT&T has responded to the first set of discovery and staff awaits the second set. We would note to the PUC that this report is filed late than would have been possible due to the continuous reluctance of GT&T to provide test year actual results, which is key to the determination of both interim and permanent rates. Repeated telephone calls from Thursday March 11, 1999 to Tuesday March 23, 1999 requesting the financial statements for December 1998 and January 1999 were made, and repeated promises by GT&T that they would be provided were broken.”

On March 25, 1998, GT&T finally submitted the December 1998 unaudited results. Rather than providing the information required for this analysis and by PUC Order (monthly statements of income and balance sheets), GT&T provided annual amounts for income and December balance sheet, which appear to have been restated to reflect a higher ratio of Guyana dollars to \$US dollars. This

restatement of assets and income is a primary drier of GT&T's alleged revenue deficiency in this filing and requires serious scrutiny before permanent rates are set.

Exhibit 2, Georgetown Consulting Group Report at 7.

GT&T improperly included unamortized balance of franchise rights to calculate the rate of return.

“[W]e [PUC staff] removed the unamortized balance of franchise rights on which GT&T sought a return. GT&T included in the rate base the excess cost (goodwill) that ATN paid to originally acquire GT&T. This is not one of the items of rate base permitted in the practice and procedures of the FCC. A listing of all permitted rate base items is contained in 47 CFR 65.820, from which goodwill is excluded. Also, goodwill is required to be amortized to Account 7360 (Other Nonoperating Income), a below-the-line item, indicating that the FCC views this item as the responsibility of the shareholder not the ratepayer.

We have removed the test year average unamortized balance of the excess purchase price over book value from rate base. Not only is this consistent with the FCC's rules for determining rate base as stated in part 65 of the FCC's rules regarding rate base item, but also with prior Guyana PUC decisions. The adjustment removes an asset from rate base from which no benefit to ratepayers occurs.”

Exhibit 2, Georgetown Consulting Group Report at 11.

GT&T's determination of working capital is faulty in calculating rate of return.

“GT&T's determination of working capital is faulty. The Company has not used a practice consistent with the practices and procedures of the United States Federal Communications Commission (FCC) as the Company is required to do under Article 6.9B of the Agreement [between ATN and Government of Guyana for the assets of GT&T]..... Our revenue requirement recommendation is based upon our belief that GT&T's computation of a working capital allowance is

inconsistent with the rules of the FCC as stated in 47CFR and is seriously flawed for use as a test year amount.”

Exhibit 2, Georgetown Consulting Group Report at 11-12.

GT&T improperly included debt service reserve fund to calculate rate of return.

“GT&T is requesting a return on the reserve fund requirement by Northern Telecom upon which GT&T shareholders are already receiving a return. We have removed this item from rate base. The balance of the debt service reserve account is a requirement of Northern Telecom. The FCC’s rules for determining rate base do not provide for this item....”

Exhibit 2, Georgetown Consulting Group Report at 13.

GT&T improperly adjusted depreciation to determine rate of return.

“GT&T unilaterally decided to adjust the rates of depreciation being applied to its depreciable assets. This was done without PUC’s approval and was alleged by Company management to be based upon the FCC or some other standard depreciation rates. This decision has the effect of increasing test year expense above that which would have occurred if the 1997 depreciation rates were applied to plant. GT&T alleges that the Purchase Agreement permits it to do this, since it “is applying FCC standards and does not require PUC approval.”

Exhibit 2, Georgetown Consulting Group Report at 14.

GT&T improperly included Advisory Fees to calculate rate of return

“GT&T continues to record and pay advisory fees to ATN without record of services, invoices and without arm length dealings. Since this is a transaction with an affiliate, the inclusion of this expense for ratemaking purposes is not consistent with FCC practice and procedures. Affiliate transactions in which a

carrier receives substantially all of a service from an affiliate which are not also provided to nonaffiliated entities are to be recorded *at cost*, per 47 CFR 32.27(d). Further, long-standing state-level precedent requires that affiliate transactions be subjected to extremely close scrutiny and be very well documented. None of these requirements are met by GT&T percentage-based fee to ATN. We have removed all of these costs on that basis.”

Exhibit 2, Georgetown Consulting Group Report at 20-21.

The evidence clearly demonstrates that GT&T lacks credibility when it comes to its data submissions to the Guyana PUC. In light of this history of lack of candor, it is not surprising that the Guyana PUC did not grant GT&T’s request for rate increases. In the event that GT&T chooses to submit financial data for the purposes of rectifying the flaws in its Petition for Waiver, the validity and accuracy of that data must be viewed with extreme skepticism.

GT&T’s claim that it is not earning its guaranteed 15 percent rate of return rings hollow. The issue was so forcefully raised by GT&T in the media that the Guyana PUC was compelled to publish an advertisement in Guyana’s major newspapers and specify the rate of returns claimed by GT&T in contrast to the PUC calculations. Exhibit 16. More significantly, the current CEO of GT&T, then the “monopoly company’s Deputy General Manager (Finance), Ms. Sonita Jagan, admitted under oath to the Public Utilities Commission (PUC) last November that the company had received more than its contractually agreed 15 percent profits each year except 1997.” Exhibit 15. Nonetheless, the refrain that GT&T is not earning its guaranteed rate of return continues. It is as if GT&T hopes that if it says it long enough, it must be true.

C. GT&T disregards its obligations for network expansion and universal service.

The analysis begins with the fact that the GT&T License obligates it to provide universal service.

GT&T shall have the obligation to provide universal service. This means that the business and development plans of GT&T will be designed to provide as many residents of Guyana as possible with the benefit of telephone service.

Exhibit 2, at 2. GT&T has only submitted an expansion plan to add 25,000 landline telephones in Guyana. This is the same plan that it agreed to when GT&T was privatized and sold to ATN back in 1990. Exhibit 14. This expansion plan, according to GT&T estimates will cost US\$45 million and according to GT&T, must be funded, not by settlement revenues but by rate increases to the Guyana consumers.

In its petition [for the waiver] GT&T talks glibly about its "Expansion Plan." In point of fact, GT&T has not carried out the Expansion Plan, which it had agreed to do when it stated to do business here and on which basis it was granted a license over a decade ago. In fact, GT&T has publicly declared on several occasions that there would be no expansion or improvement in the system unless it was given a steep rise in rates. This steep rise would be in the vicinity of 1000 percent.

Exhibit 12, Letter from Eileen Cox, President of Guyana Consumer Association.

Apart from the fact that network expansion is to be funded from higher consumer prices in Guyana and not by settlement revenue proceeds, the fact nonetheless remains that

25,000 additional land-line phones will not come close to satisfying the current demand for over 136,000 land-line telephones. The PUC made clear its targeted goals for GT&T to have 135,677 landline phones by the end of the year 2000. This level of expansion is consistent with GT&T's own market analysis, which was conducted by GT&T's consultant, Mr. Malcolm Stillion.

"After a careful review of the evidence produced and the arguments addressed in this matter, we [Guyana PUC] are of the view that GT&T should be directed to achieve the targets set for the years 1995, 1996, and 1997 in Exhibit C-4 report by Mr. Malcolm Stillion by the end of the years 1998, 1999, and 2000 respectively. That is, by the end of the year, 1998, there should be 69,278 telephone lines, by the end of the year 1999, there should be 89,054 lines and by the end of the year 2000 there should be 102,126 telephone lines. The targets set above would not include mobile cellular telephones. According to Exhibit C-4 Stillion Report, 135,677 telephones lines would be required to meet the projected demand by the end of the year 2000."

Exhibit 1, PUC Order No 5.1997 at 6, Paragraph 30, and Order at Paragraph 41 (i). The PUC ordered GT&T to satisfy the demand for a basic telephone:

1. GT&T be [sp] directed to eliminate the 37,889 backlog of held orders by the end of 1998. Based upon a level of 47,845 lines in services as of August 1996, plus the lines added to the network under the proposed plan. This would represent 97,366 lines in service by the end of 1998.
2. GT&T is [sp] further required to meet some fraction of the additional demand identified in the demand study undertaken by GT&T, which has identified a demand of approximately 125,679 lines in these average areas.

Exhibit 1, PUC Order No 5.1997 at 6, Paragraph 22.

The demand for 125,679 lines, which represents household demand, was clarified: “These are households with an identifiable demand for lines. Not all households will install lines. However, this would be made up by demand for lines by businesses, government and other classes of customers.” PUC Order No 5.1997 at 7, Paragraph 22.

Inexplicably, GT&T refused to allocate existing and unused lines and has even gone to the extreme to misinformed the Guyana PUC on its switching capacity. The PUC was forced to seek switch capacity information from ATN’s filings with the United States Securities Exchange Commission.

“As per the letter of GT&T dated 3 September, 1996, while the switch capacity of GT&T was 54,470, the access lines in service as on 24th August, 1996, were only 47,845. The unallocated lines numbering 6,625 existing in the different exchanges, less the lines allocated between 24th August, 1996, and the date of this order should be allocated and connected to the applicants for telephone connections, before the expiry of 31st December, 1996.

While GT&T claims that there were only 54,470 access lines, according to the Annual Report for 1995, submitted by ATN, which owns 80 % of GT&T, to SEC, GT&T has, as of 31 December, 1995, 62,773 recorded subscriber access lines. We accept the figure as stated in ATN’s Annual Report as correct.”

Exhibit 1, PUC Order No 5.1997 at 6, Paragraph 32. The Guyana PUC also ordered GT&T to allocate the existing and available line. *Id.* At 11, paragraph (iii). This matter is also under appeal before the Guyana courts.

GT&T also tries to make a big deal about introducing new technologies to meet the demand. GT&T cites deployment of Northern Telecoms Fixed Wireless Access (FWA)

in the Essequibo Region, which is also known as Region Three and located northeast of and borders Georgetown, the capital of Guyana. GT&T Appendix at 6. However, GT&T fails to mention that this system has a maximum capacity of only 2,000 lines in contrast to the known demand for basic telephone service in Region Three of at least 30,000. Exhibit 3. Although repeatedly asked by the Guyana PUC and the Guyana Consumers Groups, GT&T has refused to provide any information or submit any plan of how it intends to meet the demand of over 30,000 in Region Three.

The FCC should be skeptical of GT&T's claims of introducing state-of-the-art technology to Guyana and its ability to satisfy its universal service obligations. What GT&T says in its public relations pieces, such as Appendix A of its Petition For Waiver, is far different from reality. For example, GT&T introduced voice mail for the very first time in Guyana in January 1999. Exhibit 4. The service provided callers with only 8 seconds to leave a message. Exhibit 4 (see second letter to the this exhibit entitled "Voice Mail Service Is Inadequate"). Rather than fix the problems, GT&T chose to discontinue the service. Exhibit 5.

Internet Service in Guyana is unreliable. Twice this year, the entire GT&T countrywide Internet network was down, once for over four hours. Exhibit 6. GT&T offered the technically improbable explanation that both its fiber optic system and its satellite links were simultaneously down, which resulted in total disruption of its national Internet service. Exhibit 6.

GT&T also routinely blocks Websites in order to prevent Guyana consumers from accessing those Websites that provide IP telephony or VoIP services. Exhibits 7 & 9. Call itemization for phone calls is unreliable. For example, in one high profile situation, the itemization reflects that “calls were received before they were made, or minutes after they were placed where there should be no difference in the times.” Exhibit 8.

GT&T has been unable to provide adequate Internet access for Internet Service Providers (ISPs) and this frustration has led to several ISPs suing GT&T. Exhibit 10. GT&T also claims that it has an exclusive international license for all Internet transmissions. This prompted one ISP to place a paid advertisement to inform the public that GT&T does not have such a monopoly. Exhibit 11. GT&T pricing of bandwidth to ISP is prohibitive. Exhibit 25.

GT&T alleges that it transformed Guyana’s telecommunications to a “completely digital network with wireless local loop and remote satellite services, digital mobile services, and a fiber optic cable network that interconnects most of GT&T’s switches.” Petition For Waive at 5-6. GT&T also claims to have deployed a fibre optic system with “fibre optic cables run from Georgetown to Diamond, to Beterverwagting, to Timerhi, to Skeldon, to Linden, to Parika and Mahaicony **serving all communities in their path.**” GT&T Appendix A to Petition For Waiver at 5 (hereinafter GT&T Appendix A) (emphasis added).

The president of the Guyana Consumers Association, Ms. Eileen Cox, views this allegation as “patently misleading.” Exhibit 12. Accordingly to Ms. Cox, “several villages along GT&T’s fibre optic route are not served and thousands of families along those fibre optic routes require telephones and cannot get them.” Id.

A few examples will illustrate the point. The alleged fiber optic from Georgetown to Parika, if it exists, is suppose to service the needs of Region Three, which is where Parika is located. However as Exhibit 3 makes clear, the need for telephones in Region Three exceeds 30,000. Exhibit 3. The Expansion Plan to add 25,00 additional landline phone specifies that Region Three is earmarked only 1,200 additional line, which is a far cry for the demand of over 30,000. Id.

The alleged fiber optic cable network also includes Georgetown to Skeldon, which is on the border with Surname. However, the expansion plan only calls for 3,120 new lines in Region 6. Id. Mahaicony is in Region Four and is suppose to be one of those locations that GT&T has a deployed fibre optic system. One resident wrote to a local Guyana paper in frustration in June 16, 2001.

“Promises were made by the General Manager [of GT&T] that a wireless exchange would have been installed at Mahaica [which is not far from Mahaicony] to service residents within a 15-mile radius. This would have included De Hoop, Fairfiled, De Dendren, part of Mahaica Creek, Unity, Bee Hive, Ann’s Grove, Clonbrook, Cane Grove, and of course Mahaica. This will result in thousands of additional subscribers to GT&T. However, this has not materialized except for a few public booths which are extremely inadequate...”

Exhibit 23. The story is the same in and around New Amsterdam, which is the second largest town in Guyana. New Amsterdam is located in Region Six and any fibre optic cable from Georgetown to Skeldon must pass through New Amsterdam. Near to New Amsterdam, residents are perturbed that GT&T chose to stop its network just 16 rods from their village. Exhibit 24. The FCC is respectfully referred to the archives of the Stabroek News and the Guyana Chronicle, especially the letters section, which demonstrate that these letters are not exceptions to the rule, but the rule.

Insights into the attitude of GT&T is demonstrated by the fact that they do not think it is the business of the Guyana PUC to know how many lines per year that GT&T has the capacity to install.

“As to the number of lines we should install, it was my understanding that the meeting was off the record and unofficial. It would be imprudent then for this office to give the number of access lines which, in my opinion, can be installed in one year in an official document such as this.”

Exhibit 1, PUC Order No. 5/1997 at 6, Paragraph 20. GT&T's statement evidences its uncooperative stance in a matter clearly within the purview of the PUC.

II. GT&T funnels settlement revenue to its parent company for investments outside of Guyana

⁶ GT&T has not produced any evidence to demonstrate that only 13,000 of the 21,000 were functional, as it claims in Petition at 4.